

AMICE Response to Green Paper on Retail Financial Services and Insurance

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Contact person	Belma Yasharova, Legal and Policy Advisor
E-mail	Belma.yasharova@amice-eu.org
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About AMICE (Association of Mutual and Cooperative Insurers in Europe)

AMICE is the voice of the mutual and cooperative insurance sector in Europe. The Brussels-based association advocates for appropriate and fair treatment of all mutual and cooperatives insurers in a European Single Market. It also encourages the creation and development of innovative solutions for the benefit of European citizens and society.

Mutual and cooperative insurance follows the principles of solidarity and sustainability and is characterised by customer-membership and a democratic governance. The mutual business model, with its focus on using surpluses for the benefit of its members, is the natural way to provide insurance.

In Europe, the close to 2,800 insurers united in the mutual and cooperative sector account for more than half of all insurance undertakings and for a market share of almost 30%. They provide cover for more than 200 million customers and employ more than 400,000 staff within the European Union.

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General Comments

- A pragmatic approach should be taken with regards to cross-border provision of insurance products. The discretion to choose which risks to underwrite must remain within the insurer.
- There are several **barriers** which affect insurers' decision to offer cross-border insurance:
 - legal and regulatory framework: applicable law, case law, taxation rules and the supervisory environment;
 - companies' size and policies: companies' size, variety of markets in which they operate, their business strategies and risk appetite, product design rules, pricing, benefits, understanding the true risk proposed for cover, the reluctance to invest in building a brand in the target market, the costs of IT systems and of a reliable service network; cultural features, as well as language.
- On the basis of the above factors, it is difficult to organise cross-border selling of insurance products.
- The response also outlines the concept of **proximity** which is a key feature of the mutual business models.
- **Digitalisation** is a tool, but not the only tool to solve all cross-border issues.
- The quality of **enforcement** of EU retail financial services legislation across the EU is a problem for consumer trust and market integration due to the complexity and inconsistency of European legislation, and the disparities of transposition among Member States
- The use of pan-European comparison websites does not seem as a good channel to provide transparent information to consumers.
- The geographical location is an essential element in the determination of the scope of the insurance cover. Therefore, the concept of **unjustified discrimination** in the Green Paper is not accurate.
- The **portability of retail financial products** would be difficult to achieve due to the distinct social, political, regulatory and economic factors that prevail in each country.
- There is no need for further action at the EU level to improve the **transparency and comparability of insurance products** given the fact that this new regulatory framework related to the distribution of insurance products has been adopted very recently. Nevertheless, the European Commission should address the duplicative disclosure requirements.
- We are not convinced that the introduction of **standardised products or opt-in regimes** for specific types of insurance would be most effective in overcoming differences in the legislation of Member States.

Section 3: Better products, more choice and greater opportunities for consumers and businesses

1A. For which financial products could improved cross-border supply increase competition on national markets in terms of better choice and price?

- Current Accounts
- Saving accounts
- Mortgage credit
- Consumer lending
- Payment services (e.g. mobile payments)
- Car insurance
- Life insurance
- Private health insurance
- Saving and investment products
- Other
- Don't know / no opinion / not relevant

If you select 'other', please specify for which other financial products could improved cross-border supply increase competition on national markets in terms of better choice and price:

AMICE believes that a pragmatic approach should be taken with regards to cross-border supply, meaning that every business opportunity is and will be used as such. The discretion to choose which risks to underwrite must remain within the insurer. An insurer must be free to make commercial decisions about providing cross-border insurance products.

Nevertheless, there are several aspects which affect insurers' decisions to offer cross-border insurance: legal and regulatory framework on the one hand (applicable law, local legal interpretations in the courts, the tax and the supervisory environment) and companies' size and policies on the other hand (companies' size, variety of markets in which they operate, their business strategies and risk appetite, product design rules, pricing, benefits, understanding the true risk proposed for cover, the costs to invest in building a brand in the target market, the costs of IT systems and of a reliable service network; cultural features, as well as language).

On the basis of the above factors, it is difficult to organise cross-border selling of insurance products. The establishment of an appropriate infrastructure or network to manage claims efficiently may simply be too costly or cumbersome. Large European insurers have a competitive advantage because they are already active in different countries. But smaller companies are hindered from starting cross-border activities in insurance due to the lack of resources and know-how, but also due to the lack of local market data and knowledge to be able to adequately assess risks.

Mutual and cooperative insurers are also closely linked to their members and often they stay in their own country of establishment. The concept of proximity – geographical and emotional – is a key feature of the mutual business model.

Moreover, not all products are similar to each other. It is more complicated to provide complex insurance products falling under various national criteria than simple products.

2A. What are the barriers which prevent firms from directly providing financial services cross-border?

- Language
- Differences in national legislation
- Additional requirements imposed by national regulators
- Impossibility of verifying the identity of cross-border customers
- Lack of knowledge of other markets
- Cost of servicing clients cross-border (without local infrastructure)
- No EU passport available
- Other
- Don't know / no opinion / not relevant

If you select 'other', please specify what other barriers prevent firms from directly providing financial services cross-border:

There is an accumulation of various factors which prevent firms from directly providing financial services cross-border, such as cultural sensitivities and expectations, language, tax laws, differences in legal environments, the regulatory environment and supervision, and variations in the prevalence and form of insurance frauds. These factors also have an impact on the product design and the risk to be assumed by the insurer.

The absence of a presence in the consumer's country of residence can significantly impact upon customer demand.

Differences in national legislation, such as civil law, insurance contract law, taxation and social security law are important barriers which limit the cross-border opportunities and lead to an increase of costs incurred in checking compliance with local law or even expose the insurer to additional risk.

We also note that in some countries mutual insurance contracts do not have the same scope as their joint-stock company counterparts, i.e. the former include a number of provisions in their by-laws, which would be contractual for joint-stock companies. Some mutual insurers distinguish between the member status and the insurance contract. Additionally, some mutual insurers distinguish between the member quality (which means that the client must adhere to the by-laws of the company) and the insurance contract.

The existing differences relating to insurance fraud may also play a role in the decision to offer products cross-border.

Another legal barrier faced by mutual insurers engaging in cross-border activities is Member States where the creation or operation of mutuals is not foreseen, or where the Member States restrict the practice of certain insurance activities. Despite the provisions of the Treaty on the freedom of establishment and the free provision of services, mutuals have difficulties in operating in those countries restricting their mutualistic principles. It is not obvious how in practice mutuals can benefit from these freedoms. The lack of transparency on the application of these two fundamental freedoms causes practical obstacles for mutuals when expanding across borders.

Reviving the Commission project for a European legal framework for mutual companies could provide an opportunity for addressing such barriers.

On the other hand, insurance products are designed depending on the environment of the country in which the product is to be sold: product design, risk pricing, claims handling and support are all influenced by the local market and regulatory conditions. A decision to enter a foreign market therefore requires a good understanding of, and compliance with, the regulatory and supervisory requirements of that market.

Further examples of the many factors that must be considered as part of an insurer's risk calculation include:

- **Life insurance products** are dependent on the national civil laws and taxation regime of the markets in which they are offered; local taxation conditions should also be taken into account.
- **Anti-money laundering legislation** is a barrier that prevents the provision of life insurance products on a cross-border basis (see our answer to question 23).
- **Health insurance** is an area of Member State competence; the specific role and tasks of private health insurers therefore depend on the national health system.
- **Liability insurance** is closely tied to national liability legislation (causation rules, proof of loss and liability determination), as well as cost-related factors surrounding personal compensation (cost of compensation procedures for injury or loss of income due to disability caused by an accident).
- **Motor insurance** reflects similar factors as liability insurance, as well as other, road-related factors, such as: local driving behaviour that can increase the risk of accidents.
- **The coverage of flood risk** depends in particular on the relevant geographic area (topography, meteorology etc.) but also on regulatory issues (related to floodplain management, construction regulations, responsibilities involved etc.), the quality of locally available service providers (proximity, competence and cost).

Availability of statistical data necessary to populate the actuarial models underpinning the calculation of premiums can also be seen as an issue in some markets.

3. Can any of these barriers be overcome in the future by digitalisation and innovation in the FinTech sector?

- Yes
- No
- Don't know / no opinion / not relevant

If you select 'yes', please reply to question 3.1:

3.1. Please specify which of these barriers can be overcome in the future by digitalisation and innovation in the FinTech sector:

- Language
- Territorial restrictions (e.g. geo-blocking, residence requirement)
- Differences in national legislation
- Additional requirements imposed by national regulators
- Impossibility of verifying the identity of potential cross-border clients

- Lack of knowledge of other markets
- Lack of knowledge of the offer of products in another Member State
- Lack of knowledge of redress procedures in another Member State
- Cost of servicing clients cross-border (without local infrastructure)
- No EU passport available
- Other
- Don't know / no opinion / not relevant

3.2. Please explain your answer to question 3:

AMICE believes that digitalisation is a tool, but not the only tool to solve cross-border issues.

Technology can enable insurers to conclude distance contracts by verifying the identity of potential customers with an electronic signature and verification of identity, but this will only be possible if the legal environment allows insurers to use technologies easily.

Digitalisation can also assist insurers in the collection of more information about other markets or customers. It can provide them with more sophisticated means for assessing data about individual risk. For example, personal driving data collected from motor vehicles can help establish individual driving behaviour (i.e. Connected Intelligent Transportation Systems, or "C-ITS").

However, some of the barriers listed under question 2 are fundamental ones that arise from national variations and technology on its own is unlikely to overcome these barriers such as tax provisions, regulatory practices and legislation.

In some circumstances, the progress of digitalisation may even be a vector leading to the consumer being misled, knowingly or not, given the complexity of the parameters which determine the offer and which should be considered to understand the scope of the proposed guarantees and price.

4. What can be done to ensure that digitalisation of financial services does not result in increased financial exclusion, in particular of those digitally illiterate?

- Improved access to digital means
- Digital training offered by the financial industry
- Digital training offered by NGOs
- Digital training offered by public authorities
- Other
- Don't know / no opinion / not relevant

If you click 'other', please specify what else can be done to ensure that digitalisation of financial services does not result in increased financial exclusion, in particular of those digitally illiterate:

As outlined in the Green Paper, customers are becoming more connected and demand online services. This is why the insurance sector is embracing digitalisation to respond quickly and efficiently to customer demands.

However, it is important to support customers who may have difficulties in using new digital services such as elderly people that may not have the same access to technology as younger people.

In order to avoid any form of financial exclusion, the industry's business model is evolving towards a multichannel environment where insurance services are made available through online channels, as well as through more traditional channels. The regulatory initiatives should not favour one channel over the other, thereby allowing the diversity of channels to benefit consumers, whose cultures, needs and preferences vary between and across markets.

In addition, all stakeholders, in particular public authorities, should prioritize financial education in the digital environment. Insurers would benefit from action taken in this area in order to have well-informed customers and to build a trusting relation between insurance undertakings and their customers and potential customers.

5. What should be our approach if the opportunities presented by the growth and spread of digital technologies give rise to new consumer protection risks?

AMICE is of the view that the new General Data Protection Regulation and the Network and Information Security (NIS) Directive already offer a high level of consumer protection.

Given the fact that some risks are unknown, it seems impossible to prevent and regulate all risk. Nevertheless, insurers remain vigilant in order to protect their consumers' and maintain their trust, manage risks and cover new business opportunities.

Consumer protection is a key objective of EU financial services legislation and supervision. AMICE supports an effective and sound EU regulatory framework that empowers consumers to access insurance products. Broadly speaking, consumer protection per se is not a contentious issue because it can improve market efficiency as well as social justice; but the nature and extent of consumer protection is contentious because of the potential compliance burden and competitive inequality involved. In this regard, it is important that policymakers acknowledge that there is no "typical" EU consumer and duly consider consumers' various needs, demands, cultures, traditions, as well as digital literacy levels across markets. In some cases, local regulators may be better placed to develop detailed and effective rules that match consumers' local culture and expectations regarding the growth of digital technologies in their market.

Furthermore, the EU framework should take into account differences in the nature of products. A one-size-fits-all approach which does not recognise the specific features of insurance products is likely to be damaging for the industry, and ultimately for consumers.

Regulatory initiatives should have a clear and demonstrable benefit to consumers and should not restrict their access to a wide and diverse range of appropriate insurance products and services. When deciding on new consumer policies and specific consumer protection legislation the benefits to consumers and their needs should be thoroughly assessed. The benefits must in turn be balanced against both the costs of implementation and even more importantly against the risk of overregulation that can hamper product innovation and growth. There should be tailored, balanced and proportionate requirements adapted to consumer needs.

Moreover, it should not be forgotten that the new rules under the Insurance Distribution Directive enhance conduct of business rules for the entire sales process and further strengthen the level of consumer protection across the EU. These rules, as well as the new European data protection framework are equally applicable in the digital context and will therefore apply to any new digital technologies that impact the distribution of insurance products.

6. Do customers have access to safe, simple and understandable financial products throughout the European Union?

- Yes
- No
- Don't know / no opinion / not relevant

If you select 'yes', please explain your answer to question 6:

AMICE believes that customers already have access to safe, simple and understandable financial products throughout the EU. However sometimes the complexity of products is due to the complexity of EU regulatory requirements. For example, for supplementary health insurance, simplicity and understanding of the products can be undermined by an accumulation of local, national and European regulatory requirements.

A one-size-fits all approach which does not recognise the specific features of insurance products is likely to be counterproductive for the industry and ultimately for consumers.

The Insurance Distribution Directive (IDD) requires the provision of standardised information about the insurance product in order to allow the customer to make an informed decision. This standardised information will enable consumers to compare different products. Nevertheless, we consider that in order to preserve legal certainty it is crucial to include a disclaimer in the product information document (PID) emphasizing the fact that this document is only intended to provide a summary of the main coverage and exclusions associated with the product and that full pre-contractual information will be provided afterwards.

AMICE considers that the diversity of products with different characteristics offered in markets across the EU should be preserved in order not to limit consumers' choice and to ensure the suitability of products to consumers' needs.

The IDD also introduces new product oversight and governance provisions for manufacturers and distributors of insurance products which aim to ensure that insurance products meet the needs of an identified target market and that products on the market are regularly reviewed to ensure that they remain consistent with the needs of that market. AMICE members believe that the target market should be defined in a broad sense and sales outside the target market should be allowed. This would leave manufacturers and distributors some flexibility where the product is suitable/appropriate for the customer and would ensure that the definition of a target market does not unduly restrict a customer's choice where a product may prove to be suitable/appropriate, irrespective of its complexity.

Otherwise, the rigid determination of the target market could hinder product innovation and customer choice and create high organisational costs for manufacturers and distributors. The development of online sales should not be hampered by prescriptive requirements.

The current European regulations (recently adopted PRIIPs, MiFID 2 and IDD), combined with national rules appear sufficient to ensure simplification, comprehensibility and safety of insurance products. Considering that this new regulatory framework has been adopted very recently, AMICE considers that it would be premature to assess the need for enhancing further the transparency and comparability of insurance products and would advise to wait for the impact assessment of these new rules.

7. Is the quality of enforcement of EU retail financial services legislation across the EU a problem for consumer trust and market integration?

- Yes
- No

Don't know / no opinion / not relevant

If you select 'yes' or 'no', please explain your answer to question 7:

The increase in, complexity and inconsistency of European legislation, including level 2 and level 3 measures, and the disparities of transposition among Member States lead to a risk of overregulation.

There are a number of parallel and equivalent disclosure requirements under different pieces of EU financial services legislation, which ultimately apply to an individual sales process. This plethora of reporting and disclosure requirements does not necessarily make the information more accessible for consumers.

The PRIIPs Regulation and the Insurance Distribution Directive give rise to a duplication of information requirements. On one hand, Article 20 of IDD requires the provision of standardised documents, such as product information documents for non-life insurance products, while Article 6 of PRIIPs Regulation foresees the submission of key information documents (KIDs) for investment-based insurance products. The IDD provides that the PID should "*include a statement that complete pre-contractual and contractual information on the product is provided in other documents*". In addition, some Member States' legislation requires the disclosure of other standardised information.

Another example of such duplication of equivalent requirements concerns the disclosure of costs of the product under MiFID and IDD, as well as the PRIIPs Regulation.

It is likely that the information will be provided to consumers in different format in accordance with the different pieces of EU legislation applicable. This would lead to an overload of information, as well as contradict the objectives to provide consumers with accurate, fair, clear and not misleading information.

Excessively detailed pre-contractual information would be confusing for consumers, offering them little or no benefit, and would distract them from paying attention to important information, such as insurance coverage and exclusions. Therefore, the multiplicity and complexity of customer information might not ultimately serve real customer needs.

AMICE members are concerned about this potential misapplication which might cause a flawed market reaction and unintended consequences for consumers and might be a source of potential litigation.

8. Is there other evidence to be considered or are there other developments that need to be taken into account in relation to cross-border competition and choice in retail financial services?

We agree with the European Commission that enhancing cross-border competition in retail financial services could bring greater choice, lower prices and better services to consumers, as well as more opportunities for businesses.

Nevertheless, it is important to bear in mind that several factors affect insurers' decisions to offer insurance across border. These include factors such as 'knowing your customer', understanding the true risk proposed for cover (which will necessitate a thorough understanding of the applicable law, local legal interpretations in the courts, the interaction between different branches of law, and customs), culture (including expectations of the local policyholder), the form and prevalence of fraud, the tax environment, as well as the supervisory environment.

AMICE members consider that the current Insurance Block Exemption Regulation (IBER) enhances competition in the insurance sector. A full renewal of the current regime is crucial both for (re)insurers and consumers in Europe. For new stakeholders and insurance companies having small market shares, compilations, tables and studies and pools are ways to enter or to

remain active more easily on different insurance markets. Moreover, the cooperation facilitated by the IBER, assists insurers in offering innovative products and services, which would not likely be covered otherwise, meeting consumers' constantly evolving needs and expectations also due to the fast emergence of new risks.

3.1 Helping consumers buy products cross-border

3.1.1 Knowing what is available

9. What would be the most appropriate channel to raise consumer awareness about the different retail financial services and insurance products available throughout the Union?

- Independent pan-European comparison websites, including the information on cross-border products
- Information campaigns by regulators
- Information campaigns by consumer organisations
- Marketing campaigns by financial services providers or their associations
- Financial intermediaries empowered to offer cross-border financial products
- Other
- Don't know / no opinion / not relevant

If you select 'other', please specify what other channel would be the most appropriate to raise consumer awareness about the different retail financial services and insurance products available throughout the Union:

AMICE members believe that the use of pan-European comparison websites does not seem to offer a good channel to provide transparent information to consumers. These tools generally fall within a framework of national cultural understanding. Pan-European comparison websites would not be adapted to the diversity of European customers. They could even mislead them by not allowing a comparison adapted to cover a risk within a national or local (cultural, legal, fiscal, social, etc.) context (see our answer under question 2A).

As outlined in the report issued by EIOPA on comparison websites, the following issues relating to comparison websites were identified:

- Consumers tend to over-rely on the price of products, rather than the underlying terms and conditions;
- Misleading information may be provided to consumers due to conflicts of interest stemming from close commercial links between insurers and commercial comparison websites;
- Comparison websites may not necessarily be suitable for certain types of insurance products such as life insurance where more information is required than usually obtained by a short set of questions typical on such sites.

10. What more can be done to facilitate cross-border distribution of financial products through intermediaries?

The recently adopted Insurance Distribution Directive already contains a number of provisions on the freedom of establishment and the free provision of services that will facilitate intermediaries who wish to engage in cross-border distribution of financial products.

Nevertheless, there are a number of factors which will have an impact on cross-border distribution. The issue of customer satisfaction is a strong reason for consumers to remain loyal to their current provider. This has a particular significance in the insurance sector where consumers are risk-averse in their decisions and their relationship with their insurer is based on trust. As a result, consumers are cautious in dealing with new foreign entrants compared to a company that has been established in the country for decades. This factor would be amplified even further for more complex insurance products of which the consumer has limited knowledge.

11. Is further action necessary to encourage comparability and / or facilitate switching to retail financial services from providers located either in the same or another Member State?

- Yes, at Member State level
- Yes, at EU level
- No
- Don't know / no opinion / not relevant

3.1.2 Accessing financial services from anywhere in Europe

14. What can be done to limit unjustified discrimination on the grounds of residence in the retail financial sector including insurance?

The geographical location of a risk is an essential element in the determination of the scope of the insurance cover. It is not the residence as such but rather the location of the risk which is of relevance for insurance undertakings.

For example, one of the key determinants in home insurance is physical location. This is relevant to the calculation of various risks: burglary (since there are often crime hotspots) and natural catastrophe risks such as flood.

The concept of unjustified discrimination is linked in the Green Paper to the lack of “objective criteria”. It states that “in insurance, consumers’ places of residence, rather than their individual risk profiles, define the options available, as insurers will draw up policies based on the risk pool as determined by local demand”. This observation is not accurate for the following reasons:

- Pursuant to Article 7 of Rome I Regulation, the law applicable to insurance contracts covering mass risks depends on where the risk is situated at the time of conclusion of the contract and to the extent that the applicable law has not been chosen by the parties, the risk is situated where the policy holder has his/her habitual residence. The use of foreign legislation requires its strong knowledge, including the understanding of its practice and the identification of mandatory provisions. The impact on the contractual obligations is also very important, this is why it is legitimate for the insurers to use the geographical location to accept the provision of insurance coverage. It also explains why extending the legal framework on choice of law in cross-border will not ease cross-border contracts.
- Consumers’ place of residence is a very important aspect of their risk profile, as risk is directly tied to regional factors, such as local legislation, safety standards (for non-life

insurance), taxation (for life insurance) and rules or cultural attitudes regarding compensation (i.e. level of requirements for proof of damage or average settlement awards) (see also answer to question 1 and question 2). If insurers take into account the location of risk, it is because both the frequency and the cost of a claim depend on this element.

- The design of insurance products depends not only on anticipated demand but also on the insurer's risk appetite and commercial objectives.

The insurer should remain free to choose the risk to underwrite. Any prohibition on using the geographical location of the consumers would have a detrimental impact on insurers' ability to accurately assess the risk. Further negative implications might occur:

- Insurers may refuse to provide some policies at all, since the risks of having to provide cover in some areas are too great;
- Insurers may become reluctant to launch new products because the risks associated with new products generally can be mitigated if they are launched initially only in a limited geographical location;
- Consumers may purchase products that insurers do not have the facilities to support properly. This would be to the detriment of consumers;
- The financial stability of insurers could be threatened if insurers were required to provide cover in circumstances that they do not consider to be prudent.

15. What can be done at the EU level to facilitate the portability of retail financial products – for example, life insurance and private health insurance?

- Prohibit insurance firms from geographically limiting cover to the country where the policyholder is living
- Encourage insurance firm to sell insurance products with wide geographical coverage
- Other
- Don't know / no opinion / not relevant

If you select 'other', please specify what else can be done at the EU level to facilitate the portability of retail financial products:

AMICE believes that the portability of retail financial products would be difficult to achieve. For private health insurance, it is important to mention that insurers act as a complement to national regimes (i.e. social security or public pension schemes) which is a Member State competence. Each Member State has its own health care system and subsequently there are significant differences in the role and structure of private health insurance. The health system is designed according to distinct social, political, regulatory and economic factors that prevail in each country.

Depending on the basic structure of the health system in each Member State, there can be four functional categories of private health insurance: primary (including *substitute* and *principal*); *complementary*; *duplicate*; and *supplementary*.

Furthermore, based on the local requirements in the host Member State, an individual moving abroad may be obliged to adhere to the local compulsory insurance in order to be eligible for coverage. It should be also mentioned that in some Member States the healthcare providers are predominantly public sector providers while in others they are predominantly private sector providers.

The reimbursement method used by the providers varies significantly from one country to another. The level of social security benefits and contribution to healthcare system through taxes

also differs significantly. Additionally, there are different national rules on what the “general good and well-being” of national citizens signifies. The economic situation and to what extent hospitals are either supported by the state or are privatised should be also taken into consideration.

It is also worth noting that the payment of health benefits linked to a complementary health insurance when performed in another Member State is regulated by EU provisions (Regulations No 883/2004 and No 987/2009 on the coordination of social security systems and Directive No 2011/24/EU on patients' rights in cross-border healthcare. These EU provisions govern the implementation and reimbursement of health benefits by social security schemes. The insured person is entitled to reimbursement of costs of cross-border healthcare.

3.1.3 Having trust and confidence to benefit from opportunities elsewhere in Europe

17. Is further action at the EU level needed to improve the transparency and comparability of financial products (particularly by means of digital solutions) to strengthen consumer trust?

- Yes
- No
- Don't know / no opinion / not relevant

Please explain your answer to question 17:

Both the key information document (KID) under the PRIIPs Regulation and the product information document (PID) under the Insurance Distribution Directive aim to provide consumers with standardised, clear and understandable information to be able to compare different products across the EU.

Nevertheless, we recall our arguments exposed on question 6 that while trying to increase cross-border offers, the diversity of products with different characteristics offered in markets across the EU must be preserved in order not to limit consumers' choice.

Given the fact that this new regulatory framework related to the distribution of insurance products has been adopted very recently, AMICE considers that it would be premature to assess the need for further enhancing the transparency and comparability of insurance products at this time.

Furthermore, two regulatory barriers should be taken into account when looking into transparency and comparability of financial products particularly by means of digitalisation.

On the one hand, pursuant to the IDD and the PRIIPs Regulation, the pre-contractual information should be provided to the consumer on paper by default. It is only by way of derogation and under certain conditions that this information can be provided by a durable medium other than paper, or by means of a website. The conditions to be met depend on the medium and include, for instance, evidence that the retail investor has access to internet, explicit choice that can be evidenced from the retail investor, etc. It seems crucial to ensure that the formats used are suitable and digital-friendly to allow consumers to fully benefit from them.

On the other hand, according to the new PRIIPs Regulation, Solvency II Directive and IDD, the number of EU disclosure requirements applicable to the online sale of an insurance-based investment product by a broker will double, reaching 148 different pieces of pre-contractual information. In addition, the newly agreed EU legislation includes numerous duplicative rules,

which means in practice that consumers risk receiving the same type of information twice, but in a different wording and a different format.

As outlined in the recently adopted European Parliament resolution of 19 January 2016 on stocktaking and challenges of the EU Financial Services Regulation, AMICE members share the views that consumer protection does not necessarily entail large volumes of information and the focus should rather be on the quality and comprehensibility of information enabling proper decision-making. There should be a correct balance between providing consumers with the information they need to make informed choices and to understand the risks involved, without necessarily over-burdening them.

The focus of regulation should ensure that consumers are provided with information that is of a high quality and relevant, rather than just a high quantity of information. Therefore, AMICE calls on the European Commission to consider the cumulative impact of these duplicative requirements, and to take steps to remove them where they exist. This is even more key in a digitalised environment where consumers online expect a simple and straight-forward purchasing process.

18. Should any measures be taken to increase consumer awareness of FIN-NET* and its effectiveness in the context of the Alternative Dispute Resolution Directive's implementation?

* FIN-NET is a financial dispute resolution network of national out-of-court complaint schemes in the European Economic Area countries that handle disputes between consumers and financial services providers

- Yes
- No
- Don't know / no opinion / not relevant

If you select 'yes', please answer question 18.1.

18.1. If measures should be taken to increase consumer awareness of FIN-NET and its effectiveness in the context of the Alternative Dispute Resolution Directive's implementation, what of the following could be done to ensure the above?

- Better inform consumers about the availability of out-of-court settlement schemes for cross-border disputes
- Provide out-of-court settlement schemes with effective means to solve consumers' cross-border problems
- Ensure that out-of-court settlement schemes operate according to the same rules and offer equally effective means to help consumers across the EU
- Ensure that out-of-court settlement schemes operate independently from the financial industry
- Other
- Don't know / no opinion / not relevant

If you select 'other' in question 18.1, please specify what else could be done to increase consumer awareness of FIN-NET and its effectiveness in the context of the Alternative Dispute Resolution Directive's implementation:

AMICE welcomes measures that aim to encourage consumers to resolve their conflicts through out-of-court proceedings. Out-of-court dispute settlement schemes that offer a flexible, cheap and fast settlement procedure are valuable alternatives to court-based proceedings and benefit both insurers and consumers.

AMICE supports any initiative aimed at promoting the use and awareness of alternative dispute settlement (ADR) in order to enhance redress for consumers in an effective and inexpensive way.

Better consumer awareness of FIN-NET would be welcomed to continue to increase its success. The promotion of the FIN-NET network could focus on publicising its benefits and encouraging Member States to encourage their ADR schemes to join FIN-NET.

The FIN-NET website should also be reviewed to keep it up-to-date, relevant and informative in a user friendly manner. Moreover, the ADR Directive reinforces the promotion of the FIN-NET network (through for instance enhanced disclosure requirements). Its implementation will thus already help to increase awareness about the network and its use.

19. Do consumers have adequate access to financial compensation in the case of mis-selling of retail financial products and insurance?

- Yes
- No
- Don't know / no opinion / not relevant

If you select 'yes', please explain your answer to question 19:

AMICE believes that consumers have adequate access to financial compensation in the case of mis-selling of retail financial products and insurance based on the following reasons:

- All consumers in the EU can seek damages before a court in the case of mis-selling.
- Directive 93/13/EEC of 15 April 1993 on unfair terms in consumer contracts imposes an obligation on Member States to adopt national legislation laying down the unfair terms used in a contract concluded with a consumer by a seller or supplier.
- Most Member States also have compensatory collective redress mechanisms in case of mis-selling of retail financial products.

Furthermore, insurance undertakings are controlled by their national supervisory authorities whose main function is to protect consumers, including prospective policyholders from mis-selling.

21. What further measures could be taken to enhance transparency about ancillary insurance products and to ensure that consumers can make well-informed decisions to purchase these products?

The recently adopted Insurance Distribution Directive lays down an obligation to provide a product information document (PID) for non-life insurance products that will further enhance transparency and the ability of consumers to make well-informed decisions regarding the purchase of ancillary insurance products.

Moreover, ancillary insurance products also fall under the scope of application of the IDD. Therefore, no further rules are necessary given that the new rules are still to be implemented in Member States' legislation.

3.2 Creating new market opportunities for suppliers

3.2.1 Meeting the challenges and opportunities presented by digitalisation

22. What can be done at the EU level to support firms in creating and providing innovative financial digital services across Europe, with appropriate levels of security and consumer protection?

AMICE believes that the conditions for access to data in general, and access to in-vehicle data in particular, must guarantee an open choice for consumers. Such conditions are essential in order to enable innovation in financial digital services.

There should be a non-discriminatory access for all market players (especially SMEs) interested in offering innovative financial digital services to consumers.

Regarding motor insurance more specifically, the introduction of eCall will eventually contribute to a generalisation of Intelligent Transport Systems (ITS) technologies and, consequently, the further spread of telematics. It is therefore necessary for action to be taken early to ensure these technologies are available on an “open access” basis, without prejudice to requirements such as data protection, privacy and security. Access to in-vehicle data should not be restricted to a proprietary model, under the control of one stakeholder, at the detriment of free consumer choice and fair competition.

23. Is further action needed to improve the application of European Anti-Money Laundering legislation, particularly to ensure that service providers can identify customers at a distance, whilst maintaining the standards of the current framework?

- Yes
- No
- Don't know / no opinion / not relevant

Please explain your answer to question 23:

The identification of customers in distance selling of life insurance is a major issue as the anti-money laundering legislation requires a high level of certainty. Pursuant to Article 13(a) of the Anti-Money Laundering Directive, customer due diligence measures comprise identifying the customer and verifying the customer's identity on the basis of documents, data or information obtained from a reliable and independent source. But the implementation of this strict obligation in practice causes challenges and difficulties.

Therefore, the availability of affordable and reliable services to identify customers would simplify life insurance distance selling.

Moreover, good practices used in some Member States could be also used at EU level (i.e. social security number or “national identification number”).

24. Is further action necessary to promote the uptake and use of e-ID and e-signatures in retail financial services, including as regards security standards?

- Yes
- No
- Don't know / no opinion / not relevant

If you select 'yes': If further action is necessary to promote the uptake and use of e-ID and e-signatures in retail financial services, including as regards security standards, please state additional comments on possible actions:

Regulation (EU) No 910/2014 on electronic identification and trust services for electronic transactions in the internal market (eIDAS Regulation) seeks to enhance trust in electronic transactions in the internal market by providing a common foundation for secure electronic interactions.

The verification of the identity of the other contracting party is of vital interest to insurance undertakings. As specified in the Green Paper, "the extension of measures for distance verification currently available in some Member States and the successful take-up of eIDAS may help remove a major barrier to the cross-border provision of services". The development of an EU-wide compliance standard which includes a requirement for E-ID providers to attest to the compliance of their solutions would be very helpful.

However, the requirements in Member States should not limit the use of distance contract signature.

It is also important that this kind of technology remains simple to set up.

26. Does the increased use of personal financial and non-financial data by firms (including traditionally non-financial firms) require further action to facilitate provision of services or ensure consumer protection?

- Yes, at Member State level
- Yes, at EU level
- No
- Don't know / no opinion / not relevant

If you select 'no', please explain your answer to question 26:

Insurers collect and process financial and other personal data to analyse the risks that individuals wish to cover, which in turn allows them to tailor products accordingly. Data processing is also an essential part of evaluating and paying policyholders' claims, complying with EU regulations, and in the detection and prevention of fraud. Ultimately, data processing lies at the very heart of insurance.

The recently revised EU data protection package safeguards consumers' rights but also enables the free movement of data across Europe. With the new rules in place, no further action is needed to facilitate either the provision of services or ensure consumer protection.

However, regarding the conditions of access to data in general, and access to in-vehicle data in particular, it is necessary for some action to be taken at EU level in order to ensure the conditions (both technical and legal) surrounding access to in-vehicle data do not undermine free consumer choice, and the right to open competition for all market players (especially SMEs). In this context,

the best way to facilitate the provision of services based on the use of data is to ensure that access to this data is done through open platform technologies.

27. Should requirements about the form, content or accessibility of insurance claims histories be strengthened (for instance in relation to period covered or content) to ensure that firms are able to provide services cross-border?

- Yes
- No
- Don't know / no opinion / not relevant

If you select 'no', please explain your answer to question 27:

It is important to point out that the segmentation would damage the core principle of insurance based on risk pooling. Claims histories contribute to this segmentation and can even lead to exclusion.

Regarding complementary health insurance, the question on the form, content or accessibility of insurance claims histories is very sensitive. The Green Paper mentions that "consumers will also want to benefit from the increased availability of data when they rely on a positive claims history". But the "behaviour" of the individual is one of the parameters that may affect the health hazard. It is not the only determinant. It is therefore necessary to limit the consideration of the impact of this parameter in the granting of guarantees and pricing to avoid any form of price discrimination.

28. Is further action necessary to support firms in providing post-contractual services in another Member State without a subsidiary or branch office?

- Yes, at Member State level
- Yes, at EU level
- No
- Don't know / no opinion / not relevant

If you select 'no', please explain your answer to question 28:

As explained in our previous answers, insurance requires a local knowledge of the market in order to assess risk and design corresponding coverage, which contradicts the logic of post-contractual services without a subsidiary or branch office.

For example, the issue of claims management regarding property and liability insurance is linked to the rules and procedures of the country in which a product is sold. As mentioned in our answer to question 2, liability insurance is closely tied to national liability legislation (causation rules, proof of loss and attribution of liability), as well as cost-related factors surrounding personal compensation (cost of compensation procedures for injury etc.). In this regard, the absence of local presence and control would directly impact the viability of the insurer in that market. The insurer could be subject to sanctions both by the judicial authorities, as well as the national supervisory authorities for violations of national rules.

31. What steps would be most helpful to make it easy for businesses to take advantage of the freedom of establishment or the freedom of provision of services for innovative products (such as streamlined cooperation between home and host supervisors)?

Insurance requires a local knowledge of the market in order to assess risk. The challenge therefore lies not in the free provision of services but the freedom of establishment, in particular for mutual insurance undertakings.

However, in the absence of a European legal recognition of the mutual insurance model, it is not possible for such an undertaking to operate in a Member State which does not recognize this business model.

32. For which retail financial services products might standardisation or opt-in regimes be most effective in overcoming differences in the legislation of Member States?

- Life insurance (This work would build on existing EIOPA research on the Pan-European Personal Pension product)
- Mortgage
- Other
- None
- Don't know / no opinion / not relevant

If you select 'other', please specify for which other retail financial services products standardisation or opt-in regimes might be most effective in overcoming differences in the legislation of Member States:

AMICE members are not convinced that the introduction of standardised products or opt-in regimes for specific types of insurance would be most effective in overcoming differences in the legislation of Member States.

Standardised products would limit the freedom to design products. There is thus a risk that products would not meet the demands and needs of consumers. The benefits and added value to consumers of such products would therefore be questionable. Since standardisation is likely to impede product diversity, it is unlikely to bring about the benefits intended by the European Commission.

There is a danger that at EU level only a limited number of product features are selected, to keep the products simple. However, it is uncertain whether the proposed features are equally important for all consumers across different Member States. The risk is that standardization leads to the impoverishment of insurance offers, at the expense of the consumers, and that consumers' demands and needs are not met, as is the case, for example with the current proposals for a Pan-European Pension Product (PEPP).

Another difficulty with an introduction of standardised insurance products or opt-in regimes is that consumers would be expected to be able to accurately assess under which regime (national or EU-standardised) an insurance product covering a given risk would be most advantageous to the consumer.

In this context, the difference in complexity between a simple bank account and a given insurance product is crucial. This is why raising financial customers' awareness could be a solution (see also question 9).

AMICE would urge caution in proposing a 29th regime for life insurance products building on the work carried out by EIOPA on a pan-European personal pension product (PEPP). The need for

any standardised or opt-in regime in this field would need to be demonstrated and supported with clear evidence.

Furthermore, the demand for such a standardised product is likely to depend on the maturity of the different national markets. AMICE maintains that any proposed 29th regime must allow for existing national practices to be respected. It is key for the establishment of the pan-European products that the product features adapt to the national context.

33. Is further action necessary at the EU level in relation to the 'location of risk' principle in insurance legislation and to clarify rules on 'general good' in the insurance sector?

- Yes
- No
- Don't know / no opinion / not relevant

If you select 'no', please explain your answer to question 33:

AMICE does not consider that the current EU legal framework on choice of law in cross-border insurance contracts for mass risks (Rome I Regulation) poses an obstacle to the supply of such contracts. This is because other factors such as language, culture, 'knowing your customer', local customs, and legal, tax and supervisory environments are likely to have a greater impact on the decision to provide cross-border insurance of mass risks than the ability to choose the law applicable to the contracts.

Some EU non-life insurers do carry out mass risk business on a cross-border basis. Rather than trying to sell the same contracts as they provide in their home state, they may work with insurance intermediaries in the host member state to offer insurance contracts that are in line with the expectations of local customers. Often the contracts will be subject to the law of the host member state, which is usually the member state where the risk is situated and the policyholder has his habitual residence. Not only does this comply with Article 7 of Rome I Regulation, it is generally in line with customer expectations.

EU insurers must also take into account the "general good" provisions of other Member States in which they offer insurance products. These often include detailed insurance contract law provisions. Therefore, although insurers may choose to supply insurance products cross-border, which in the case of mass risks will tend to be subject to the law of the host Member State, the barriers listed in our answer to question 2 will be the obstacles to be overcome where it is deemed that there is a sufficiently large demand to be met in another Member State justifying the investments.

34. Please provide any additional comments in the box below:

Preference for Free provision of services over Freedom of establishment

The current consultation could be taken as indicating an EU policy preference for cross-border provision of retail financial services by means of freedom of services provision over freedom of establishment. In the context of insurance, AMICE would caution against such preference as it ignores the specificities and complexities of cross-border insurance provision. As explained throughout this consultation, cross-border insurance provision is complicated by several local factors that impact the ultimate design and offering of an insurance product. Insurance products therefore tend, in general, to be offered cross-border through freedom of establishment (branches) or partnership agreements. This is because it enables insurers to establish the proper network needed to offer good insurance products and associated services.

Distinguishing between retail financial services

On the one hand, care must be given to distinguishing between simple financial products (e.g. a simple current account) and more complex or long-term products and also between different types of insurance products. The obstacles to cross-border provision as well as demand will differ and should be considered individually and separately. On the other hand, the specificities and complexities of cross-border insurance provision should be taken into account as it depends on several elements like local factors that impact the ultimate design and offering of an insurance product and also on legal and regulatory framework.

Premium comparisons

The current consultation compares the premium charged for insurance products in various Member States and concludes that wide variances in premium reflect market deficiencies.

AMICE would caution against such an oversimplification. When comparing premiums (both within and between Member States) care must be taken to compare like with like products and risks. As explained in response to question 32, various differences are likely to apply to the terms and scope of insurance products that may be given a similar name or description or seek to meet similar needs. They will thus vary widely in premium charged. That is not a sign of deficiencies in the market but rather a sign of the efforts insurers make to be competitive by seeking to meet consumer needs and demands through innovation in product design.